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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code</b>	12 VAC30-80-30
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates: Other Types of Providers
<b>Action title</b>	Supplemental Payment Method for Faculty in Dental Pediatric Residency Programs
<b>Document preparation date</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#excreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#excreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) *Please explain why this is an “emergency situation” as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(ii) as discussed below.

Item 326 BBBB of the 2005 Appropriations Act provides that DMAS shall modify state regulations and the State Plan for Medical Assistance Services to make supplemental Medicaid payments to dentists who are faculty affiliated with the dental pediatric residency programs at Virginia Commonwealth University (VCU). The State Budget also provides for the authority to enact emergency regulations contingent upon federal approval.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled Supplemental Payment Method for Faculty in Dental Pediatric Residency Programs (12 VAC 30-80-30) and also to authorize the initiation of the promulgation process provided for in COV § 2.2-4007.

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this action is to provide additional funding for dental pediatric residency programs at VCU to replace cutbacks in funding from Medicare Graduate Medical Education (GME) programs. Funding of the general fund portion of these payments shall come from funds otherwise appropriated to VCU.

**Legal basis**

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

The regulatory section that is affected by this action is 12 VAC 30-80-30. This corresponds to Attachment 4.19-B of the State Plan for Medical Assistance (Methods and Standards for Establishing Payment Rates: Other Types of Care).

This new regulation subsection provides for a supplemental payment for dentists who are faculty affiliated with dental pediatric residency programs at VCU. The regulation also establishes a methodology for calculating the supplemental payment. The supplemental payment amount shall be the difference between the Medicaid payments otherwise made for dentists and the lower of 136% of the Medicaid fee or charges. Commercial fees for dental services at VCU are approximately 136% of Medicaid fees.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-30		None	Effective with this regulation DMAS will make supplemental payments to dentists who are faculty affiliated with dental pediatric residency programs at VCU.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

The only alternative is requesting additional general funds. The proposed change would not require the expenditure of additional general funds.

**Family impact**

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment.